

FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
DEAN C. PLASKETT,	)	
MARC A. BIGGS, and	)	Criminal No. 2007-60
LEROY L. MARCHENA,	)	
	)	
Defendants.	)	
_____	)	

**ATTORNEYS:**

**Armando Bonilla, Esq.**

Washington, D.C.

*For the government,*

**Gordon C Rhea, Esq.**

Mount Pleasant, SC

*For defendant Dean C. Plaskett,*

**Treston E. Moore, Esq.**

St. Thomas, U.S.V.I.

*For defendant Marc. A. Biggs,*

**Adriane J. Dudley, Esq.**

St. Thomas, U.S.V.I.

*For defendant Leroy L. Marchena.*

**ORDER**

**GÓMEZ, C.J.**

Before the Court is the motion of Dean C. Plaskett ("Plaskett") to exclude the testimony of cooperating defendant Hollis L. Griffin ("Griffin") regarding the efforts of Plaskett and Griffin to receive kickbacks on a \$6,000,000 government

contract not described in the indictment (the "Eighth Contract"). In approximately April, 2004, Plaskett allegedly executed the Eighth Contract with the Natural Resources Consultants, Inc. ("NRC") in an attempt to secure a \$1,000,000 kickback on the contract proceeds. Plaskett argues that the introduction of such evidence would violate Federal Rule of Evidence 404(b) ("Rule 404(b)").<sup>1</sup>

On November 8, 2007, a grand jury returned a twelve-count indictment against Plaskett, and alleged co-conspirators Marc. A. Biggs ("Biggs") and Leroy L. Marchena ("Marchena"). Count One charges that from early 2000, until approximately January, 2004, Plaskett and Biggs participated in a conspiracy to commit bribery concerning programs receiving federal funds, and to commit honest services mail fraud. Count Eight charges that, from approximately December, 2004, through approximately June 7, 2005,

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<sup>1</sup> Rule 404(b) provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

Plaskett and Marchena conspired to obstruct justice. The government alleges that the District of the Virgin Islands was the location of both conspiracies.

The government provided notice of its intent to introduce evidence of the Eighth Contract. However, the government maintains that such notice is not required because Rule 404(b) is not implicated. The Court agrees.

Rule 404(b) proscribes the admission of evidence of other crimes when offered to prove bad character. See Fed. R. Evid. 404(b) (2006). However, "Rule 404(b) does not extend to evidence of acts which are intrinsic to the charged offense." *United States v. Cross*, 308 F.3d 308, 320 (3d Cir. 2002). "[A]cts are intrinsic when they directly prove the charged conspiracy." *Id.* "Even if such proof [of intrinsic acts] is extremely prejudicial to the defendant, the trial court would have no discretion to exclude it because it is proof of the ultimate issue in the case." *United States v. Bobb*, 471 F.3d 491, 497 (3d Cir. 2006) (citations and quotations omitted).

Here, Griffin's testimony is "intrinsic" evidence used by the government in an attempt to directly prove Plaskett's participation in the charged bribery and mail fraud conspiracy. See, e.g., *United Stats v. Males*, 715 F.2d 568, 571 (11th Cir. 1983) (holding that evidence of prior dealings between an informant and the defendant were not governed by Rule 404(b) since the evidence was not extrinsic to charged offenses).

Accordingly, the government is not precluded from introducing Griffin's testimony simply because it relates to conduct and parties and dates not explicitly referenced in the indictment. *See United States v. Irizarry*, 341 F.3d 273 (3d Cir. 2003) (holding that evidence of the defendants' roles in a predicate conspiracy was intrinsic evidence that directly proved the charged RICO offense); *United States v. Bello-Perez*, 977 F.2d 664 (1st Cir. 1992) (holding that the fact that the indictment charged a conspiracy beginning at an "unknown date," "at the latest by August 1988" did not preclude evidence relating to events predating August of 1988); *United States v. Boyd*, 595 F.2d 120 (3d Cir. 1978) ("[T]he government . . . may establish the existence of a continuing core conspiracy which attracts different members at different times and which involves different sub-groups committing acts in furtherance of the overall plan.").

Because Griffin's testimony regarding the Eighth Contract does not implicate Rule 404(b), it is hereby

**ORDERED** that Plaskett's motion is **DENIED**.

**DATED: February 8, 2008**

S\\_\_\_\_\_  
**CURTIS V. GÓMEZ**  
**Chief Judge**

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